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March 6, 2014

Honorable Andrew L. Carter, Jr.,
United States District Judge,
Southern District of New York,
500 Pearl Street,
New York, NY 10007.

Re: *In re North Sea Brent Crude Oil Futures Litigation*,
No. 1:13-md-02475 (ALC)

Dear Judge Carter:

We write on behalf of BP p.l.c. to submit, on behalf of BP p.l.c., Statoil ASA, Royal Dutch Shell plc, Phibro Trading LLC, Trafigura AG and Morgan Stanley, a scheduling order for filing amended complaints and motions to dismiss in *In re North Sea Brent Crude Oil Futures Litigation*, No. 1:13-md-02475 (ALC) and *Harter v. BP p.l.c., et al.*, Case No. 1:13-cv-07443 (ALC) (“Harter”).¹ We have been unable to reach an agreement with Harter, who filed with the Court today an alternate proposal for a bifurcated briefing schedule. We understand that interim lead counsel for plaintiffs in the consolidated cases take no position on which scheduling order should be entered.

All parties agree that the consolidated amended complaint in the consolidated cases and the amended complaint in the *Harter* action should be filed forty-five (45) days after the Court enters a scheduling order. All parties also agree that defendants should be given sixty (60) days after the entry of a scheduling order to answer, move to dismiss, or otherwise respond to the consolidated amended complaint in

¹ At the February 20, 2014 initial pretrial conference, the Court ordered that the cases filed on behalf of derivatives traders be consolidated (Case Nos. 1:13-cv-03473-ALC; 1:13-cv-03587-ALC; 1:13-cv-03944-ALC; 1:13-cv-04142-ALC; 1:13-cv-04553-ALC; 1:13-cv-04872-ALC; 1:13-cv-04938-ALC; 1:13-cv-05577-ALC; 1:13-cv-07089-ALC; 1:13-cv-08151-ALC; 1:13-cv-08030-ALC; 1:13-cv-08240-ALC; 1:13-CV-08179-ALC; 1:13-cv-08270-ALC), and ordered that the case filed by Harter on behalf of landholders and leaseholders be coordinated.

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the consolidated cases; that oppositions to any motions to dismiss should be due sixty (60) days after opening briefs are filed; and that reply briefs in further support of any motions to dismiss will be due forty-five (45) days after briefs in opposition are filed.

Defendants' proposed order applies this schedule to both the consolidated amended complaint and the *Harter* complaint. Harter's proposal would apply this schedule only to (i) the consolidated amended complaint, and (ii) "common or overlapping claims" in the *Harter* complaint. (Proposed Scheduling Order (Mar. 6, 2014), ECF No. 111-1, ¶ 3.) Harter proposes that following resolution of common or overlapping claims, a separate briefing schedule be set to address Harter's "allegations . . . which are not common." (*Id.* ¶ 5.) Contrary to Harter's assertion that this proposal would "streamline" the motion to dismiss process, this bifurcated approach would be inefficient for both the parties and the Court. First, the bifurcated schedule unnecessarily requires defendants to respond twice to Harter's amended complaint, when defendants could more efficiently respond to the entirety of Harter's amended complaint in a single set of papers. Second, Harter's proposal burdens defendants with determining which allegations in his amended complaint are common or overlapping with those in the consolidated amended complaint. Third, the proposal removes defendants' discretion to determine the most effective manner of responding to the complaints; depending on the allegations, the complaints may not be well-suited to overlapping briefing on common or overlapping claims. Finally, the proposal would position Harter to file a second amended complaint after the Court's ruling on common issues in lieu of negotiating a second briefing schedule with defendants—gamesmanship which this Court should not permit.

For these reasons, Defendants respectfully request that the Court enter the enclosed proposed briefing schedule.

Respectfully,

/s/ Daryl A. Libow

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cc: Counsel of Record (via ECF)